IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10285 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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EVEREST OVERSEAS THROUGH ITS PARTNER & - Petitioner(s)

Versus

JAMNAGAR MUNICIPAL CORPN. & 1 - Respondent(s)

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Appearance :

MR NIRAV C THAKKAR for Petitioner(s) : 1,
MR JR NANAVATI, SR. ADVOCATE WITH MR AR THACKER for Respondent(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 19/12/2005

ORAL JUDGMENT

In the present petition, the petitioner, Everest Overseas, a registered partnership firm (hereinafter to be referred to as “the petitioner firm”) has challenged

the action of the State Government as well as of the Jamnagar Municipal Corporation in not honouring the Gujarat Industrial Policy 2000 formulated by the State Government vide resolution dated 14.11.2000 with respect to grant of octroi exemption to the petitioner.

2. Short facts leading to the present petition can be noted at the outset.

2.1 The petitioner firm is a registered partnership firm and it has set up a 100 per cent Export Oriented Unit (EOU) dealing in the manufacturing of building hardware like, hinges, castors, tower bolts,stoppers, handles, aldrops, ball-catchers, etc. as also sanitary wares and parts and other household articles and parts thereof. The manufacturing unit of the petitioner firm is situated within the limits of the Jamnagar Municipal Corporation, respondent No.1 herein.

2.2 It is the case of the petitioner and which has not been seriously disputed by the respondents that the State Government, respondent No.2 herein, formulated Gujarat Industrial Policy 2000 vide resolution dated 14.11.2000. A copy of the resolution dated 14.11.2000 has

been produced on record by the State Government along with its affidavit in reply. It is the case of the petitioner-firm that for the export oriented units, certain exemptions were provided for by the State Government vide resolution dated 14.11.2000. It is the case of the petitioner-firm that the resolution specifically provided that all the EOUs would be entitled to exemption from payment of octroi.

2.3 The petitioner was desirous of setting up an EOU within the limits of the Jamnagar Municipal Corporation. Necessary application in this regard was made by the petitioner-firm. The petitioner has produced at Annexure B and C to the petition the copies of permission granted by various authorities permitting the petitioner to start its unit at plot No.C-2/107-43 of GIDC, Shanker Tekri, Jamnagar. At annexure D to the petition, the petitioner has produced a letter dated 18.5.2004 written by the Assistant Commissioner of Central Excise, Jamnagar by which the petitioner has been granted license for private bonded warehouse under section 58 of the Customs Act, 1962 for 100 per cent EOU and permission for manufacturing under section 65 of the Customs Act. In short, through these documents, the petitioner-firm seeks

to establish on record that the petitioner was given permission to start the EOU, which the petitioner did set up in accordance with the permission so granted.

2.4 It is the case of the petitioner that though the Government policy indicated in resolution dated 14.11.2000 exempted the petitioner from the liability of payment of octroi, respondent No.1 Jamnagar Municipal Corporation has been demanding and collecting octroi from the petitioner and till 22.7.2004, respondent No.1 had collected octroi of Rs.1,04,832/-. The petitioner has been representing against collection of octroi by respondent No.1 Corporation contending that the same is illegal and impermissible. However, respondent No.1 did not accede to the request of the petitioner. The petitioner was, therefore, compelled to file the present petition.

3. In nut-shell, the case of the petitioner is that the petitioner is exempt from payment of octroi pursuant to the Government resolution dated 14.11.2000 and the action of collecting octroi by respondent No.1 Corporation is illegal and unlawful.

4. Respondent No.1 Corporation as well as respondent No.2 State Government have filed their affidavits in reply in response to the notice issued by this Court. Respondent No.1 Corporation has contended, inter alia, that the Municipal Corporation is an autonomous body and so far as the question of collection of octroi is concerned, respondent No.1 has not granted any exemption from payment of octroi to the petitioner-firm and the petitioner, therefore, cannot claim exemption from payment of octroi. It is further contended that the Industries and Mines Department of the State Government, which has issued the resolution dated 14.11.2000 does not have any power to direct the Municipal Corporation not to collect its taxes.

5. Respondent No.2, State Government, has filed its affidavit dated 1st March 2005. In the said affidavit, the factum of policy decision taken vide resolution dated 14.11.2000 is not disputed. It is, however, stated that thereafter yet another resolution dated 10.6.2004 was issued by the Industries and Mines Department of Government of Gujarat. It is further contended that the Corporations are empowered to levy octroi on any item brought within the city limits under sections 127 and

149 of the Bombay Provincial Municipal Corporations Act, 1949. Along with the said affidavit in reply, the State Government has also annexed a copy of the Government resolution dated 10th June 2004. This resolution also touches the facilities to be given to hi-tech parks, investment parks, export parks, etc. The implication of formulation on new policy in this resolution has been subject matter of some debate between the parties to which reference will be made at a later stage.

6. Additional affidavit came to be filed on behalf of the State Government on 7th April 2005 in which essentially it is contended that the power to grant exemption in octroi rests with the Municipal Corporation and such exemption can be granted by the Corporation after obtaining approval of the State Government. It is emphatically stated that the State Government has no power to compel the Corporation to grant such exemption.

6.1 Yet another affidavit in reply came to be filed on behalf of the State Government pursuant to the observations made by this Court in its order dated 19.4.2005. In this additional affidavit also relying on the opinion given by the learned Advocate General, the

State Government has contended that it cannot compel the Corporation to give exemption from levy of octroi.

7. In this factual background, the issue for consideration in the present petition is whether the petitioner is entitled to receive octroi exemption from respondent No.1 Corporation as per the Industrial Policy of the Government of Gujarat formulated through its resolution dated 14.11.2000.

8. Learned advocate for the petitioner Shri Thakkar submitted that the petitioner is an export oriented unit and its factory is situated within the limits of Jamnagar Municipal Corporation. He contended that the State Government had formulated an industrial policy which clearly stated that such units would be exempt from payment of octroi. He drew my attention to the resolution dated 14.11.2000 in which besides other exemptions, it has been provided that such units (i.e. EOU) will be entitled to octroi exemption. It was contended that the State Government cannot back out from the said resolution and the promise held out therein. It was contended that any such action would amount to breach of promise and the principles of promissory estoppel

would apply. It was submitted that the petitioner set up the unit with octroi exemption in mind. Having set up the unit on the basis of the promise held out by the State Government, it would not be legally permissible for the State Government to withdraw such concession on the pretext that the State Government has no power to grant exemption. It was additionally contended that the State Government has ample powers under the Bombay Provincial Municipal Corporations Act, 1949 to enforce its wish on respondent No.1 Corporation and to require that respondent No.1 formulates necessary rules granting such exemption.

8.1 Learned advocate for the petitioner placed reliance on certain decisions of the Hon'ble Supreme Court in support of his contentions. Reliance was placed on the decision in the case of Union of India v. Anglo Afgan Agencies, AIR 1968 SC 718 wherein the Hon'ble Supreme Court on the principles of promissory estoppel observed that even though the case did not fall within the terms of section 115 of the Evidence Act, it was still open to a party who had acted on a representation made by the Government to claim that the Government shall be bound to carry out the promise made by it even though

the promise was not recorded in the form of a formal contract as required by the Constitution.

8.2 Reliance was placed in the case of Century Spinning and Manufacturing Company Ltd v. The Ulhasnagar Municipal Council, 1970 (1) SCC 582 in which the Hon'ble Supreme Court observed that a public body is not exempt from the liability to carry out its obligation arising out of the representations made by it relying upon which a citizen has altered his position to his prejudice.

8.3 Reliance was also placed on the decision reported in the case of Motilal Padampat Sagar Mills Co. Ltd. v. State of U.P., (1979) 2 SCC 409 in support of the contention with respect to the ground of promissory estoppel.

9. On the other hand, learned counsel Shri J.R.Nanavati appearing for respondent No.1 Corporation with learned advocate Shri A.R.Thacker submitted that the stand of respondent No.1 Corporation is just and proper. He contended that the petitioner cannot insist for octroi exemption from respondent No.1 Corporation. He submitted that respondent No.1 Corporation is an

autonomous body and the State Government has no power to direct respondent No.1 Corporation to provide for octroi exemption that too against the wish of respondent No.1 Corporation. He contended that respondent No.1 has to undertake essential welfare activities for the residents of the Corporation and such activities can be undertaken only through availability of funds. Octroi is one of the important constituents of the revenue of the Corporation and the State Government cannot direct the Corporation to grant exemption with respect to collection of octroi especially when the Corporation has formulated rules for collection of octroi after following the procedure under section 149 of the said Act and such rules do not provide for any such exemption. He relied on various provisions of the Bombay Provincial Municipal Corporations Act, 1949 in support of his contentions.

9.1 It was also contended that the Industries and Mines Department of the State Government had no power to grant exemption or to promise exemption from payment of octroi. In any case, it was the case of respondent No.1 Corporation that by virtue of the subsequent industrial policy formulated by the State Government vide resolution dated 10th June 2004, the earlier policy circulated

through resolution dated 14.11.2000 would stand superseded.

9.2 Reliance was placed on the decision of the Hon'ble Supreme Court in the case of State of W.B. v. Kesoram Industries Ltd., (2004) 10 SCC 201. My attention was invited to the observations made by the Hon'ble Supreme Court in para 32 of the said decision wherein it was observed that legislations in the field of taxation and economic activities need special consideration and are to be viewed with larger flexibility in approach. It was contended that in the field of taxation greater latitude and greater play should be allowed to the Legislature because it has to deal with complex problems which do not admit of solution through any doctrinaire or straitjacket formula.

10. Learned AGP Shri Gori appearing for respondent No.2 State Government also opposed the petition. He submitted that undoubtedly the State Government had formulated the policy vide resolution dated 14.11.2000 and one of the aspects of the policy did touch the question of grant of octroi exemption. However, the State Government does not have power to have such octroi

exemption implemented if the Corporation resists the same. Besides placing reliance on the provisions of the Bombay Provincial Municipal Corporations Act, he also placed reliance on the opinion of the Advocate General in this regard. He additionally contended that by virtue of formulation of policy vide resolution dated 10th June 2004, earlier policy of 14.11.2000 would not survive. At a belated stage, he sought to place on record a communication dated 26th September 2005 after serving a copy to the learned advocate for the petitioner. In this communication from the Industries and Mines Department, it is stated that the concessions and exemptions granted vide resolution dated 14.11.2000 would not survive beyond 10.6.2004 when the new policy was formulated.

11. In the backdrop of the above factual and legal controversies, the question required to be decided by this Court is whether the petitioner is entitled to octroi exemption from respondent No.1 Corporation for bringing in goods for its industry situated within the Municipal limits of the Jamnagar Municipal Corporation.

12. Before getting down to deciding the core issues, some peripheral aspects can be cleared. Firstly, it may

be noted that this is not a case where the principles of promissory estoppel would apply. At least till presentation of the communication dated 26th September 2005 on record, the State Government had never contended that the petitioner is not covered by the industrial policy formulated by resolution dated 14.11.2000. It is not the case of respondent No.2 State Government that the industrial policy is not to be adhered to. It is also not the case of the petitioner that respondent No.2 has failed to fulfill its promise. In fact, it is the case of the petitioner that respondent No.1 Corporation has not fulfilled the promise held out by respondent No.2 State Government. In fact, the petition was instituted initially joining only respondent No.1 Corporation as a party and the State Government was joined as respondent No.2 subsequently. Even the prayer made in the petition is primarily against respondent No.1 Corporation. Reason for this is not difficult to find. It is respondent No.1 Corporation which is collecting octroi and it is respondent No.1 Corporation alone which can be, if a case is made out, called upon to grant exemption thereof. It can thus be seen that the entire focus of the challenge of the petitioner is against respondent No.1 Corporation in not granting octroi exemption to the

petitioner firm. In the present case, therefore, facts do not suggest that the person who held out the promise is seeking to back out from the same. The principles of promissory estoppel, therefore, would not apply in the present case.

12. In fact at no stage has the State Government set up a case that it wants to back out from the promise given through its resolution dated 14.11.2000. Even the communication dated 16th September 2005 cannot be construed as a decision of the State Government to back out from its promise held out vide its resolution dated 14.11.2000. At best, the communication dated 26th September, 2005 is an interpretation of the Industries and Mines Department that by virtue of formulation of the policy through resolution dated 10th June 2004, the earlier policy dated 14.11.2000 would not survive. Quite apart from the validity of such a stand, it nowhere indicates that the policy of 14.11.2000 was not meant to be implemented as long as the same was in force. In this view of the matter, I do not find that the entire petition can be dealt with by deciding the question of promissory estoppel. Precisely for this reason, though I have taken on record the communication dated 26th

September, 2005 at a belated stage, I do not think it necessary to delay any further the conclusion of the petition since in my opinion, nothing really turns on such an opinion of the Industries and Mines Department.

13. The central question that calls for consideration is whether the State Government has the authority in law to have its wish implemented on respondent No.1 Corporation with respect to the question of octroi exemption. To reiterate briefly, I do not find that the stand of the Government is that vide resolution dated 14.11.2000 no promise was held out to Export Oriented Units that such units will be exempt from payment of local octroi. The vital question, however, is considering the statutory provisions, was it possible for the State Government to hold out such promise and is it possible for the State Government to legally have the same implemented ? Answer to these questions would decide the fate of the petition. It would, therefore, be necessary to take note of some of the statutory provisions in this regard.

14. Chapter IX-A was added to the Constitution of India by 73rd Amendment Act 1992. The Chapter pertains to

the Municipalities. Article 243Q provides for constitution of Municipalities. Article 243R provides for composition of Municipalities and provides inter alia that the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards. Article 243U provides for duration of the Municipalities. The said Article, inter alia, provides that every Municipality unless sooner dissolved under any law for the time being in force shall continue for five years from the date appointed for its first meeting and no longer. Sub-clause (3) of Article 243U of the Constitution provides for completion of election of the Municipality before the expiry of its duration.

14.1 Article 243W of the Constitution provides for powers, authority and responsibilities of the Municipalities. It inter alia provides that the Legislature of a State may by law endow the Municipalities with such powers and authority as may be necessary to enable them to function as institution of self-government. Article 243W reads as under:

> "243W. Powers, authority and responsibilities of Municipalities, etc. -- Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow --
>
> (a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provision for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein,with respect to --
>
> (i) the preparation of plans for economic development and social justice;
>
> (ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;
>
> (b) The Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule."

Article 243X of the Constitution provides for power to impose taxes by, and funds, of, the Municipalities which reads as follows:

> "243X. Power to impose taxes by, and funds, of, the Municipalities – The Legislature of a State may, by law --
>
> (a) authorise a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;
>
> (b) assign to a Municipality such taxes,

duties, tolls and fees levied and collected by the State-Government for such purposes and subject to such conditions and limits;

(c) provide for making, such grants-in-aid to the Municipalities from the Consolidated Fund of the State; and

(d) provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Municipalities and also for the withdrawal of such moneys therefrom,

as may be specified by law."

14.2 Article 243ZA inter alia provides that the superintendence, direction and control of the preparation of electoral rolls and the conduct of all elections to the Municipalities shall be vested in the State Election Commission.

14.3 The provisions introduced in the Constitution by 73rd Amendment Act 1992 would indicate that great stress has been put by the Legislature on the concept of self-governance of the Municipalities and its autonomous functioning.

15. To provide for the establishment of Municipal Corporation for certain cities in the Province of Bombay, the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter to be referred to as "the said Act") was

enacted. Section 63 of the said Act provides for matters to be provided for by the Corporation. Sub-section (1) of section 63 of the said Act enumerates the activities with respect to which it is incumbent on the Corporation to make reasonable and adequate provision by any means or measures which it is lawfully competent to it to use or take. Such activities include, besides, others, erection of substantial boundary marks defining the limits or any alteration in the limits of the city; the watering, scavenging and cleansing of all public streets and places in the city and the removal of all sweepings therefrom; collection, removal and treatment and disposal of sewage, offensive matters and rubbish; construction, maintenance and cleansing of drains and drainage works and of public latrines, water closets, urinals and similar conveniences; entertainment of a fire brigade equipped with suitable appliances for the extinction of fires and the protection of life and property against fire; construction or acquisition and maintenance of public hospitals and dispensaries; the lighting of public streets, municipal markets and public buildings vested in the Corporation. These and many other such activities enlisted in section 63(1) of the said Act are ones for which it is incumbent on the Corporation to

make reasonable and adequate provision.

15.1 Section 64 of the said Act specifically makes it necessary for the Corporation to provide for maintenance and treatment for the persons undergoing rabies treatment. Section 65 of the said Act requires the Corporation to provide for maintenance of lunatics and lepers. Section 66 of the said Act enlists the activities which may be provided for by the Corporation in its discretion. Such matters include, orgainsation, maintenance or management of institutions within or without the City for the care of persons who are infirm, sick or incurable or for the care and training of blind, deaf, mute or otherwise disabled persons or of handicapped children; organisation, maintenance or management of maternity and in fact welfare houses or centers; swimming pools, public wash houses, bathing places and other institutions designed for the improvement of public health; dairies or farms within or without the City for the supply, distribution and processing of milk or milk products for the benefit of the residents of the city. These and many such other matters as provided in section 66 of the said Act for which provision may be made by the Corporation within its

discretion.

15.2 It can thus be seen that the Corporation has been entrusted with certain compulsory activities and certain activities which the Corporation can undertake at its discretion. Wide variety of essential services and developmental activities are covered under these two categories.

15.3 Section 127 of the said Act provides for taxes to be imposed under the said Act. Sub-section (1) of section 127 of the said Act empowers the Corporation to impose taxes such as property tax, tax on vehicles, boats and animals. Sub-section (2) of section 127 provides for other taxes in addition to taxes specified in sub-section (1). Section 127(2) of the said Act reads as follows:-

> "(2) In addition to the taxes specified in sub-section (1) the Corporation may for the purposes of this Act and subject to the provisions thereof impose any of the following taxes, namely;-
>
> (a) octroi;
> (c) a tax on dogs;
> (d) a theater tax;
> (e) a toll on animals and vehicles entering the City;
> (f) any other tax (not being a tax on professions, trades, callings and employment or a tax on payments for admission to any entertainment which the State Legislature has power under the Constitution to

impose in the State."

It can thus be seen that under clause (a) of section 127(2) of the said Act, the Corporation for the purpose of the said Act is empowered to collect octroi.

15.4 Section 128 of the said Act provides for the manner of recovering municipal taxes. Sub-section (5) of section 128 provides that octroi and toll may be recovered by seizure and sale of goods and vehicles. Section 149 of the said Act provides for the procedure to be followed in levying other taxes i.e. taxes specified in sub-section (2) of section 127 of the said Act. Section 149 of the said Act reads as follows:

> "149. Procedure to be followed in levying other taxes.
>
> (1) In the event of the Corporation deciding to levy any of the taxes specified in sub-section (2) of section 127, it shall make detailed provision, in so far as such provision is not made by this Act, in the form of rules, modifying, amplifying or adding to the rules at the time in force for the following matters, namely:-
>
> (a) the nature of the tax, the rates thereof, the class or classes of persons, articles or properties liable thereto and the exemptions therefrom, if any, to be granted;
>
> (b) the system of assessment and method of recovery and the powers exercisable by the Commissioner or other officers in the collection

of the tax;

(c) the information required to be given of liability to the tax;

(d) the penalties to which persons evading liability or furnishing incorrect or misleading information or failing to furnish information may be subjected;

(e) Such other matters, not inconsistent with the provisions of this Act, as may be deemed expedient by the Corporation:

Provided that no rules shall be made by the Corporation in respect of any tax coming under clause (f) of sub-section (2) of section 127 unless the State Government shall have first given provisional approval to the selection of the tax by the Corporation.

(2) The rules shall be submitted by the Corporation to the State Government and the State Government may either refuse to sanction them or refer them back to the Corporation for further consideration or sanction them either as they stand or with such modifications as it thinks fit, not, however, involving an increase in the rate or rates or the levy or the extent thereof.

(3) Any sanction given by the State Government under sub-section (2) shall become operative on such date not earlier than one month from the date of the sanction as the State Government shall specify in the order of sanction, and the Corporation shall be competent to levy the tax covered by the sanction as from the date so specified.

(4) The Corporation and the State Government shall take such steps as may be practicable to ensure that the date specified in the order of sanction is the first day of April, unless the sanction is given in pursuance of a proposal for supplementary taxation under section 150.

Provided that nothing in sub-section (4) shall affect the power of the Corporation to levy a tax as from a date later than the first day of April if the sanction of the State Government is not given by the first day of March immediately preceding and if the State Government in the order of sanction specifies a date later than the first day of April for the commencement of the levy of the tax.

(5) The provisions of this section shall apply, as far as may be, to any alteration which the Corporation may from time to time decide to make in the rates fixed for any tax, or in the class or classes of persons, articles, or properties liable thereto or in the exemptions therefrom, if any, to be granted."

15.5 Section 453 provides that rules contained in Schedule A shall be deemed to be part of the Act. Section 453 reads as follows:

"453. Rules in Schedule to be part of the Act. The rules in Schedule A as amended from time to time shall be deemed to be part of this Act."

Section 454 of the said Act provides for alteration of and addition to Schedule. Section 454 reads as follows:

"454. Alteration of and addition to Schedule.
(1) The Corporation may add to Schedule A rules not inconsistent with the provisions of this Act and the rules made by the State Government under this Act

which expression shall in this section be deemed not to included the said Schedule A to provide for any matter dealt with or for any of the purposes specified in the said Schedule A and may, subject to the same limitations, amend, alter or annul any rule in the Schedule A.

Provided further that if any rule regulating the punishment of an offence is altered or amended, the punishment awarded under such altered or amended rule shall not exceed the maximum provided in section 468."

Section 455 of the said Act provides for power to make rules subject to the sanction of the State Government and it reads as follows:-

"455. Power to make rules subject to the sanction of State Government.

(1) The power to make, add to, alter or rescind any rule under section 454 shall be subject to the sanction of the State Government and to the condition of the rules being made after previous publication.

(2) All rules made under section 451 shall be finally published in the Official Gazette and shall thereupon have effect as if enacted in this Act.

(3) In addition to the publication required under sub-section (1) and (2), the Corporation may determine in each case what further publication, if any, is required for rules made or proposed to be made."

Section 456 of the deals with the power of the State Government to make rules. It reads as follows:

> “456. Power of State Government to make rule.
>
> (1) The State Government may by notification in the official gazette make rule to provide for matter expressly required or allowed by rules or for such of the matters for carrying out the purposes of this Act.
>
> (2) All the rules made under sub-section (1) shall be subject to condition of previous publication.
>
> Provided that the State Government may for sufficient reason, dispense with the requirement of previous publication.
>
> (3) All the rules made under sub-section (1) shall be laid for not less than 30 days before the State Legislature as soon as possible after they are made and shall be subject to rescission or to such modification as the Legislature may make during the session in which they are also so laid, or the session immediately following.
>
> (4) Any rescission or modification so made by the State Legislature shall be published in the official gazette and shall thereupon take effect.
>
> (5) Any rules made by the Corporation which are inconsistent with the rule made by the State Government shall be null and void to the extent of inconsistency.
>
> (6) The State Government may at any time require the Corporation to make rules under section 454 in respect of any purpose or matters specified in section 457.
>
> (7) If the Corporation fails to comply with such requisition within such reasonable time as may be fixed by the State Government, the State Government may, after previous publication make such rules and the rules so made shall, on final publication in the

> official gazette, have effect as if enacted in the Act."

15.6 Section 457 of the said Act pertains to matters in respect of which rules may be made. It provides that in particular, and without prejudice to the generality of the powers conferred by section 454, rules made thereunder may provide for or regulate all or any of the purposes and matters specified therein. These matters include, ward elections, proceedings of the Corporation and Committees and conduct of business, Municipal Officers and Servants, contracts and the manner in which the contracts may be executed. Sub-section (7) thereof provides for assessment and recovery of municipal taxes which can be reproduced herein:

> "(7) Municipal Taxes. (a) The assessment and recovery of municipal taxes;
>
> (b) the conditions on which refunds of municipal taxes shall be allowed.
>
> (c) in respect of a tax leviable under sub-section (2) of section 127, the matters referred to in sub-section (1) of section 149."

15.7 Rule 33 of the Schedule A provides that octroi shall be payable on demand. Rule 49 of Schedule A provides for special provisions in regard to non-payment

of octroi or toll. It provides, inter alia, that in case of non-payment of octroi or any toll on demand by any person authorized in this behalf by the commissioner such person may seize any goods on which the octroi is chargeable or any vehicle or animal on which the toll is chargeable or any part of the burden of such vehicle or animal which is in his opinion is of sufficient value to satisfy the demand together with the expenses incidental to the seizure, detention and eventual sale.

16. From the above statutory provisions, it can be seen that octroi is levied by the Municipal Corporation pursuant to the powers granted to it by the said Act contained in section 127(2). For imposition and collection of octroi, procedure is also laid down by the statute. The procedure required to be followed in this regard is contained in section 149 of the said Act. Under section (1) of section 149 of the said Act, the Corporation is required to make detailed provisions in the form of rules, the nature of tax, the rates thereof, class or classes of persons, articles or properties liable thereto and the exemptions therefrom, if any, to be granted. The rules also need to provide for the system of assessment and method of recovery and powers

exercisable by the Commissioner or other officers in the collection of the tax, information required to be given of liability to the tax, the penalties to which persons evading liability or furnishing incorrect or misleading information or failing to furnish information may be subjected to. Rules thus made by the Corporation under section 149(1) of the said Act have to be submitted to the State Government. Under section (2) of section 149, the State Government may either refuse to sanction the rules or refer them back to the Corporation for further consideration or sanction them as they stand or with such modification as it thinks fit.

16.1 Thus when specific provisions are made under the said Act, particularly under sub-section (2) of section 127 read with section 149 empowering the Corporation to levy octroi and also providing for the procedure for formation of rules in this regard, it can be seen that such powers and procedure are vitally different from the rules contained in Schedule A as provided in section 453 of the said Act. As noted, section 453 of the said Act provides that the rules contained in Schedule A shall be deemed to be part of the Act. Section 454 of the said Act empowers the

Corporation to add to Schedule A rules not inconsistent with the provisions of the said Act and the rules made by the State Government. Section 455 further provides that power to make rules under section 454 shall be subject to the sanction of the State Government.

16.2 Thus section 127(2) read with section 149 of the said Act covers entirely a different area where the Corporation seeks to collect different taxes - other than those specified in section 127(1) - such as octroi and other similar taxes after following the procedure for formulating rules as provided in section 149 of the said Act whereas section 453 to 455 of the said Act cover a different area where the question is to amend or add to the Schedule A rules.

16.3 Section 456 of the said Act empowers the State Government to make rules. In particular sub-section (1) of section 456 of the said Act empowers the State Government by notification in official gazette to make rule to provide for matters expressly required or allowed by the rules or for such of matters for carrying out the purposes of the Act. Sub-section (5) of section 456 provides that any rule made by the Corporation which are

inconsistent with the rules made by the State Government shall be null and void to the extent of inconsistency. Sub-section (6) of section 456 provides that the Government may at any time require the Corporation to make rules under section 454 in respect of any purpose or matter specified in section 457. Sub-section (7) of section 456 in turn provides that if the Corporation fails to comply with such requisition within a reasonable time as may be fixed by the State Government, the State Government may after previous publication make such rules and the rules so made shall have effect as if enacted in the Act.

16.4 Thus it can be seen that though the State Government has power to make rules, such powers are hedged with a limitation that such rules can be made to provide for matters expressly required or allowed by the rules or such of the matters for carrying out the purposes of the Act. Power of the State Government to make rules, therefore, must be within the parameters laid down in sub-section (1) of section 456 and unless conditions provided therein are satisfied, the State Government would not have power to make rules for any purpose unconditionally. Similarly it can also be seen

that under sub-section (6) of section 456, it is within the power of the State Government to require the Corporation to make rules under section 454 in respect of any purpose or matter specified in section 457 and in case of failure of the Corporation to comply with such a requisition, it is within the power of the State Government to make such rules after previous publication. This power does not extend to matters provided in section 127(2) of the said Act and the procedure for making rules therefor is governed by section 149 of the said Act. Even otherwise, as discussed, under section 456(6) read with section 456(7) the State Government may require the Corporation to make rules and in case of failure by the Corporation to comply with such a requisition, may make such rules, such powers would be exercisable when no rules are in existence. If rules framed by the Corporation are already in force after approval from the State Government, it is not open to the State Government to require the Corporation to frame rules in a particular manner by amending the existing rules. Power of the Government is to require the Corporation to frame rules if there are none and to frame rules itself if the Corporation fails to comply with the requisition.

16.5 It can thus be seen that neither under section 456(1) nor under the provisions contained in section 456(6) read with section 456(7), the State Government enjoys any power to ask the Municipal Corporation to provide for certain exemption from collection of octroi.

17. The matter can be looked from somewhat different angle. As noted earlier, a greater thrust has been given to the concept of self-governance of the Municipalities by introduction of Chapter IXA in the Constitution of India by 73rd Amendment of 1992. As noted, the BPMC Act provides for various matters which the Corporation shall have to provide for. Such matters are of extreme importance to urban agglomerations. With ever increasing urban population and with expansion of cities and resultant congestion, the modern day life throws up new challenges and the Municipalities have to provide for sanitation, health care, vaccination, sewage clearance, water supply and many such similar activities. Such activities are essential services and some may also include welfare measures required for the well being of the citizens. For the said purpose, municipal fund is created. Collection of tax is one of the major contributions to such a fund. It would not be possible

for the State Government to curtail the power of the Corporation to collect taxes which in turn would facilitate the Corporation to undertake various essential and important activities and several developmental and welfare activities. Any other interpretation would be in conflict with the concept of self-governance and the autonomous status of the Corporation. It would also seriously curtail the powers of the Corporation to manage its own affairs through collection taxes.

18. From the combined reading of the provisions contained in the Constitution of India and the said Act, I find that the State Government was justified in contending that it lacked power to enforce exemption promised by the State Government in favour of the EOU in so far as the question of collection of octroi by the Corporation is concerned. The Corporation is equally justified in contending that no matter what the stand of the Government is, it is not open for the State Government to insist that the Corporation must give such exemptions. Grant of exemption is a policy matter for the Corporation to decide upon and to provide for by making rules by following the procedure laid down under

the said Act. If the rules which are formulated by the Corporation after following the procedure under section 149 of the said Act, and it is not in dispute that such rules have already been framed and in operation for quite some time, do not provide for such exemptions it is not possible for the State Government under the provisions of the said Act to enforce its wish on the Corporation and to compel the Corporation to frame such rules for octroi exemption. The stand of the petitioner, therefore, must fail.

19. Before parting, I would, however, like to make a few observations. It is undoubtedly true that the State Government did circulate its Industrial Policy 2000 vide resolution dated 14.11.2000. The resolution in fact did state that Export Oriented Units will be exempt from payment of local octroi. Would it not have been better if the State Government had examined the legal issues before formulating such a policy? Would it not have been better if expert legal opinion was obtained before formulating the policy rather than facing litigation? Quite apart from leading to unnecessary litigation, such a hurried approach would leave long term damage to the credibility of the State Government. When large scale

industries with special focus on export are being encouraged to set up its units with promise of concessions and exemptions, it would certainly set a bad example when after having held out a promise, the State Government needs to turn around and state that it is legally unable to have the promise implemented. Quite apart from the legality of the issues arising, I find that the entire episode has left an unnecessary aftertaste.

20. In the result, I find that the petitioner has not made any case for interference. The petition fails and is hereby rejected. Rule is discharged with no order as to costs. Interim relief is vacated.

(Akil Kureshi, J.)

(vjn)